

REMARKS

1. In response to the Office Action mailed March 23, 2009, Applicant respectfully requests reconsideration. Claims 1-38 were last presented for examination. In the outstanding Office Action, claims 1-38 were rejected. By the foregoing Amendments, claim 2 has been amended. Thus, upon entry of this paper, claims 1-38 will be pending in this application. Of these thirty-eight (38) claims, 2 claims (claims 1 and 20) are independent.
2. Based upon the following Remarks, Applicant respectfully requests that all outstanding rejections be reconsidered, and that they be withdrawn.

Examiner Interview

3. Applicant would like to thank the Examiner and Primary Examiner George Evanisko for discussing the outstanding Office Action with Applicant's representatives in the telephonic interview that took place on June 24, 2009. During the interview, Applicant's representatives discussed the outstanding rejections under §103. The Examiner agreed to reconsider the rejection in light of the reasons presented by Applicant's representatives, and issue a new Office Action or a Notice of Allowance. Applicant agreed to file this response comprising a summary of the Interview.

Art of Record

4. Applicant acknowledges receipt of form PTO-892 listing an additional reference identified by the Examiner.

Claim Amendments

5. By the foregoing Amendments, Applicant has corrected informalities in claim 2.

Claim Rejections under §103

6. The Examiner has rejected claims 1-38 under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,157,861 to Faltys et al. (hereinafter, "Faltys") in view of International

Publication No. WO 00/52963 to Cochlear Limited (hereinafter, “Cochlear Limited”). Applicant respectfully submits that for at least the reasons stated below, the rejections of the pending claims should be reconsidered and withdrawn.

7. Applicant’s independent claim 1 recites “[a] method of fitting an auditory stimulation system having a plurality of channels to a recipient, the method comprising . . . obtaining a response to the applied stimulation; and adjusting **a plurality of the current level settings** of the initial current level profile based on the obtained response.” (See, Applicant’s claim 1, above; emphasis added).

8. Faltys discloses “[a] self-adjusting implantable cochlear implant system.” (See, Faltys, Abstract, line 1.) In the Office Action, the Examiner recognized that Faltys “fails to disclose obtaining a response for a plurality of channels and adjust the current level setting for a plurality of channels.” (See, Office Action, page 3). The Examiner attempts to cure this defect of Faltys by proposing a combination of Faltys and Cochlear Limited. Applicant respectfully disagrees with this proposed combination for at least the following reasons.

9. Cochlear Limited discloses, for example, “a method for adjusting the operation of a cochlear prosthesis.” (See, page 2, lines 10-11.) Specifically, Cochlear Limited discloses “adjusting the operation of said cochlear implant prosthesis thereby causing said prosthesis **to operatively apply stimulations** to at least some of said plurality of electrodes, all of said plurality of electrodes, and/or any other available electrodes, **at a rate** dependent on [an] optimum stimulation rate.” (See, page 2, lines 20-24; emphasis added.) Thus, Cochlear Limited discloses, for example, adjusting a **stimulation rate** for a plurality of electrodes dependent on an optimum stimulation rate. However, Applicant submits that the portion of Cochlear Limited relied upon by the Examiner does not teach “adjusting a plurality of **the current level settings** of the initial current level profile based on the obtained response,” as recited in Applicant’s claim 1. (Emphasis added.)

10. During the noted Examiner interview, Applicant’s representatives argued that **current level** settings and **stimulation rates** are not the same. Applicant’s representatives further argued that “adjusting a plurality of **the current level settings**,” as recited in Applicant’s claim 1, above, (emphasis added), is not obvious in view of Cochlear Limited’s teaching of adjusting a

stimulation rate for a plurality of electrodes given the differences between stimulation rates and current levels. During the interview, Primary Examiner Evanisko indicated his agreement with this argument.

11. Applicant, therefore, respectfully submits that proposed combination of Faltys and Cochlear Limited does not render obvious “adjusting *a plurality of the current level settings* of the initial current level profile based on the obtained response,” as recited in Applicant’s claim

1. Applicant accordingly respectfully requests that the Examiner reconsider and withdraw the outstanding rejection of Applicant’s claim 1 for at least this reason.

12. In addition, Applicant’s independent claim 20 recites a “means for adjusting *a current level setting of at least two channels* of the plurality of channels based on an obtained response to alter the current level profile of the channel array.” (See, Applicant’s claim 20, above.) Applicant respectfully requests that the Examiner reconsider and withdraw the rejection of claim 20 at least for reason(s) similar to those set forth above with regard to claim 1.

Dependent claims

13. The dependent claims incorporate all the subject matter of their respective independent claims and add additional subject matter which makes them independently patentable over the art of record. Accordingly, Applicant respectfully asserts that the dependent claims are also allowable over the art of record.

Conclusion

14. In view of the foregoing, this application should be in condition for allowance. A notice to this effect is respectfully requested.

15. Applicant reserves the right to pursue any cancelled claims or other subject matter disclosed in this application in a continuation or divisional application. Any cancellations and amendments of above claims, therefore, are not to be construed as an admission regarding the patentability of any claims and Applicant reserves the right to pursue such claims in a continuation or divisional application.

Dated: July 23, 2009

Respectfully submitted,

Electronic signature: /Michael Verga/
Michael Verga

Registration No.: 39,410
CONNOLLY BOVE LODGE & HUTZ LLP
1875 Eye Street, NW
Suite 1100
Washington, DC 20006
(202) 331-7111
(202) 293-6229 (Fax)
Attorney for Applicant